



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 7650-98

24 March 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF EX-~~XXXXXXXXXXXX~~ USMC,
527-47-2951

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachment
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by recharacterizing the discharge under other than honorable conditions issued on 21 January 1983.

2. The Board, consisting of Mr. Hogue, Mr. Schultz, and Mr. Tew, reviewed Petitioner's allegations of error and injustice on 17 March 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 28 August 1979 for four years at age 21. At the time of enlistment he had completed twelve years of formal education.

d. The record reflects that during the period of 5 November 1980 to 21 September 1982, Petitioner received five nonjudicial punishments (NJP). The offenses included unauthorized absences totalling about four days, willful disobedience of a lawful

order, being drunk in public, loss of identification card, breaking restriction on two occasions, and absence from his appointed place of duty on three occasions. On 25 October 1982 Petitioner was convicted by civil authorities of battery with injury and was sentenced to confinement for two days.

e. Petitioner's military record shows that on 27 December 1982 he requested discharge under other than honorable conditions in order to avoid trial by court-martial for unauthorized absences totalling 28 days, absence from his appointed place of duty, and breaking restriction. The request was granted and he was so discharged on 21 January 1983.

f. In enclosure (1), Petitioner implies that alcohol abuse contributed to his misconduct. He states that he has good postservice conduct and has been sober for the past eight years.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board first notes that the infractions which resulted in the five NJP's were relatively minor in nature. Although the offenses which resulted in the civil conviction and the request for discharge were more serious, the Board does not believe that the record, taken as a whole, warrants discharge under other than honorable conditions. In this regard, the Board notes that Petitioner served for more than a year without incident, and served about 40 months of a four-year enlistment. The Board also believes that alcohol abuse was a contributing factor in Petitioner's misconduct, even though the record reflects only one offense that is clearly alcohol related. Based on the foregoing, the Board concludes that the discharge should be recharacterized to general.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of good of the service to escape trial on 21 January 1983 vice the discharge under than honorable conditions issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 26 October 1998.

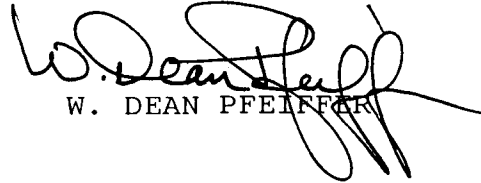
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

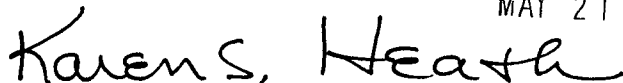
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:

MAY 21 1999



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)